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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA  
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7 RICHARD DALEY,  
8 Plaintiff,

9 vs.

10 CVS PHARMACY, INC.,  
11 Defendant.  
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Case No. 2:16-cv-02693-JCM-CWH

**ORDER**

13 Presently before the court is Defendant CVS Pharmacy Inc.'s Motion to Stay Discovery and  
14 for Exemption from the Early Neutral Evaluation Program (ECF Nos. 12, 13), filed on March 13,  
15 2017. Plaintiff Richard Daley filed a response (ECF Nos. 14, 15) on March 20, 2017. Defendant  
16 filed a reply (ECF No. 19) on March 27, 2017.

17 Defendant requests that discovery be stayed and that it be exempted from the early neutral  
18 evaluation requirement pending the court's resolution of its motion to dismiss and to compel  
19 arbitration (ECF Nos. 7, 8), which is pending before the United States district judge assigned to this  
20 case. Defendant argues that its motion to compel arbitration is potentially dispositive of the entire  
21 complaint because the parties contractually agreed that jurisdiction over disputes between the  
22 parties rests solely with an arbitrator. Defendant further argues that no discovery is needed for the  
23 court to rule on its motion to dismiss and to compel arbitration. According to Defendant, forcing it  
24 to conduct discovery and appear at the early neutral evaluation conference would deprive it of the  
25 inexpensive and expeditious arbitration for which it contracted. Finally, Defendant argues Plaintiff  
26 would not be prejudiced by a stay because the case is in its early stages and that if the court denies  
27 its motion to dismiss and to compel arbitration, the parties may proceed with discovery and  
28 participate in the early neutral evaluation conference.

1 Plaintiff responds that he also seeks to cancel the early neutral evaluation conference.  
2 Although Plaintiff responds that the motion to stay discovery should be denied, he does not provide  
3 any legal argument or authority in support of his position and therefore consents to the granting of  
4 Defendant's motion to stay discovery. *See* LR 7-2(d) (stating in relevant part that "[t]he failure of  
5 an opposing party to file points and authorities in response to any motion . . . constitutes a consent  
6 to the granting of the motion.") Additionally, the court has taken a "preliminary peek" at the  
7 motion to stay discovery and to compel arbitration and finds that the pending motion is potentially  
8 dispositive of the entire case and that the motion can be decided without additional discovery. *See*  
9 *Ministerio Roca Solida v. U.S. Dep't of Fish & Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013);  
10 *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 603 (D. Nev. 2011). The court therefore will grant  
11 Defendant's motion to stay discovery and to vacate the early neutral evaluation conference.

12 IT IS THEREFORE ORDERED that Defendant CVS Pharmacy Inc.'s Motion to Stay  
13 Discovery and for Exemption from the Early Neutral Evaluation Program (ECF Nos. 12, 13) is  
14 GRANTED.

15 IT IS FURTHER ORDERED that the Early Neutral Evaluation set for May 1, 2017 is  
16 VACATED.

17 IT IS FURTHER ORDERED that if Defendant's motion to dismiss and to compel  
18 arbitration (ECF Nos. 7, 8) is denied, the parties must meet and confer and file a stipulated  
19 discovery plan with 21 days from the date of the order denying the motion.

20 IT IS FURTHER ORDERED that if Defendant's motion to dismiss and to compel  
21 arbitration (ECF Nos. 7, 8) is denied, the parties must jointly contact Magistrate Judge Ferenbach's  
22 chambers to reschedule the early neutral evaluation conference.

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24 DATED: April 3, 2017

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C.W. Hoffman, Jr.  
United States Magistrate Judge  
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